

## CHAPTER 2

### ABSENTEE, MILITARY AND OVERSEAS VOTERS

The goal of this chapter is to inform county elections officials of the federal and state law requirements concerning military and overseas voters who wish to vote absentee ballots in an election in a California jurisdiction.

#### **Federal Law Requirements**

Title VII of HAVA addresses the voting rights of military members and overseas citizens. The uncertainties of overseas mail service in politically unsettled areas or in remote locations in underdeveloped countries, where many American military and relief workers are deployed, have caused some votes by our nation's most dedicated citizens to go uncounted in past elections. HAVA sets forth guidelines and requirements for both military personnel and civilians to help ensure that every effort is made to include these voters in all future elections.

HAVA requires that the military appoint voting assistance officers who have sufficient time and resources to assist military personnel stationed overseas with matters related to elections and voting. HAVA charges the military with the responsibility to publicize the availability of registration and voting materials to both military personnel and their dependents and to disseminate information for returning registration forms, absentee ballot request forms, and completed ballots in sufficient time for local elections officials to process them in accordance with legally-mandated deadlines. (HAVA § 701.)

In addition, for voters in all states, HAVA requires that absentee ballot status for military and overseas voters remain in effect through two regularly scheduled general elections for federal office. (HAVA § 704.) HAVA also requires election officials to accept a standard federal oath rather than a state one, if an oath is required by state law. (HAVA § 705.)

To allow ample time for the receipt and processing of voter registration and absentee ballot applications, HAVA Section 706 requires that elections officials accept early submission of these forms from military and overseas voters. A state may not refuse to accept or process an otherwise valid registration application or absentee ballot application on the grounds that it was submitted prior to the first date on which the state otherwise accepts and processes such applications. (HAVA § 706(a).)

If, for any reason, the voter registration or the application for absentee ballot is not accepted, the elections official shall notify the voter of the reason for the rejection. (HAVA § 707.)

#### **State Law Requirements**

Under California law, electors who are military personnel or private citizens living outside the United States, as well as their spouses and dependents, are considered "special absentee voters." (Elec. Code, § 300(b).) When a voter who qualifies as a

special absentee voter under this statute applies for an absent voter's ballot, the application is deemed to be both an affidavit of registration and an application for permanent absentee voter status. (Elec. Code, §§ 3100, 3104, 3303.) A special absentee voter may also register to vote and apply for an absent voter's ballot via facsimile. (Elec. Code, § 3103(f).) A U.S. citizen living overseas should complete a "Federal Post Card Registration and Absentee Ballot Request," and mail it to his or her local county elections official. This form is available through a link on the Secretary of State's website, or by going directly to <http://www.fvap.gov/pubs/onlinefpca.pdf>.

If an elections official receives an application for an absent voter's ballot from a special absentee voter prior to the 60th day before the election, the official shall keep the application and process it on or after the 60th day prior to the election. (Elec. Code, § 3103(a).) If an application is rejected, the elections official shall return it to the applicant with the reason for rejection stated on it, together with a new blank application. (Elec. Code, § 3106.)

If the application is accepted and filed, the elections official shall immediately send the voter a ballot in a form prescribed and provided by the Secretary of State. (Elec. Code, § 3103(b).) Upon request of the special absentee voter, the elections official may send the ballot to the voter by mail, facsimile, or electronic transmission. (Elec. Code, § 3103(f).) The elections official shall send with the ballot a list of all candidates who have qualified for the ballot by the 60th day before the election and a list of all measures that are to be submitted to the voters and on which the voter is qualified to vote. The voter shall be entitled to write in the name of any specific candidate seeking nomination or election to any office listed on the ballot. (Elec. Code, § 3103(b).)

California Elections Code section 3103.5(a)(1) permits special absentee voters who are temporarily living outside the United States or the District of Columbia to return their ballots by facsimile transmission. To be counted, the elections official must receive the faxed ballot no later than the closing of the polls on election day. (Elec. Code, § 3103.5(a)(1).) The faxed ballot must be accompanied by an identification envelope containing all the information required by Elections Code section 3011. Although the faxed ballot will not, of course, be enclosed in the identification envelope, the statute requires that a copy of the completed envelope accompany the faxed ballot. Elections Code section 3011 requires that the following information accompany the faxed ballot:

- (a) A declaration, under penalty of perjury, stating that the voter resides within the precinct in which he or she is voting and is the person whose name appears on the envelope;
- (b) The signature of the voter;
- (c) The residence address of the voter as shown on the affidavit of registration;
- (d) The date of signing;

- (e) A notice that the envelope contains an official ballot and is to be opened only by the canvassing board;
- (f) A warning plainly stamped or printed on it that voting twice constitutes a crime;
- (g) A warning plainly stamped or printed on it that the voter must sign the envelope in his or her own handwriting in order for the ballot to be counted;
- (h) A statement that the voter has neither applied, nor intends to apply, for an absent voter's ballot from any other jurisdiction for the same election;
- (i) The name of the person authorized by the voter to return the absentee ballot pursuant to Section 3017;
- (j) The relationship to the voter of the person authorized to return the absentee ballot; and,
- (k) The signature of the person authorized to return the absentee ballot.

The faxed ballot must also be accompanied by an oath of voter as set forth in Section 3103.5(a)(1). Although this oath includes an acknowledgement of the potential waiver of the voter's right to a secret ballot, each elections official is required to adopt appropriate procedures to protect the secrecy of absentee ballots returned by facsimile transmission. (Elec. Code, § 3103.5(a)(2).) The ballots of special absentee and overseas voters shall otherwise be received and canvassed at the same time and under the same procedure as regular absent voter ballots. (Elec. Code, § 3102, 3310.) Accordingly, when the elections official receives a special absentee ballot by facsimile, the official determines the voter's eligibility to vote by comparing the signature on the returned ballot with the signature on that voter's registration affidavit. (Elec. Code, § 3103.5(a)(3).)

Finally, although a special absentee voter is permitted to return a voted ballot by facsimile transmission, he or she is encouraged to return the ballot by mail or in person if possible. A special absentee voter should return a ballot via facsimile only if doing so is necessary for the ballot to be received before the close of the polls on election day. (Elec. Code, § 3103.5(a)(4).)

Additional information useful to elections officials and military and overseas voters is available on the Secretary of State's website at [www.ss.ca.gov](http://www.ss.ca.gov), including the Statewide Voter Information Guide and a list of candidates for statewide office and the State Legislature, as well as candidates for federal office and Congress. The Voter Information Guide is provided to the counties by E-45, and is mailed to the voters starting on E-40. The list of elections officials also includes links to county web pages

and e-mail addresses for county elections officials. (Note that a few of the smaller counties do not have e-mail addresses or web sites.) In addition, military and overseas voters can contact the Secretary of State's office via e-mail at [MOV@ss.ca.gov](mailto:MOV@ss.ca.gov).